IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 715 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHOEB HAJI ABDULRAHIM SABU

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 715 of 2000

MR MM TIRMIZI for Petitioner No. 1

MR SS PATEL, APP for Respondent No. 1

..... for Respondent No. 2

MR JM BUDDHBHATTI for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/08/2003

ORAL JUDGEMENT

This is a petition under Article 226 and 227 of the Constitution of India filed by the petitioner herein in order to challenge a judgment and order dated 02/08/2000 recorded by the learned Sessions Judge, Vadodara in Forest Appeal No.10/2000 under which the learned Sessions Judge dismissed the said appeal of the present petitioner.

2. The facts of the case may be briefly stated as follows;

2.1 As per the case of the Forest Department, a truck bearing No.GJ-17-T-8452 was seized on 29/12/99. It was going from Chotta Udaipur to Baria. It was intercepted near Kevdi Check Post and about 70 quintals of wood was found in it. On verifying the records, it was noticed that the said woods were carried in the said truck, without any pass or permit and therefore, forest offence was registered and ultimately, the said woods were ordered to be confiscated along with the vehicle in question.

2.2 The petitioner preferred the aforesaid Forest Appeal before the Sessions Judge at Vadodara who dismissed the said appeal and confirmed the order of the Deputy Forest Officer, Chotta Udaipur, confiscating the woods and the truck.

3. Feeling aggrieved by the said judgment and order of the learned Sessions Judge, the petitioner has preferred this petition before this Court. It has been contended here that the petitioner had purchased woods in public auction and therefore, he was legally entitled to carry the same. It is also contended that when the woods were purchased, it was about 30 quintals and therefore, the goods were not actually weighed and therefore also, he has not committed any offence. It is, further contended that looking to the passage of time, there was no time left to the petitioner to load more wood in the said truck and therefore, the entire case of the Forest Department is not true and genuine. It is, further contended that reasonable opportunity was not provided to the petitioner and therefore, the order of the learned Sessions Judge is illegal and deserve to be set aside. The petitioner has therefore prayed that the present petition be allowed and the aforesaid judgment and order of the learned Sessions Judge, Vadodara, in Forest Appeal No.10/2000 dated 02/08/2000 be set aside and the truck as

well as the woods be released on suitable terms and conditions, in the interest of justice. Rule was issued and in response to the service of notice of Rule, Mr.S S Patel learned APP has appeared on behalf of respondent State. I have heard the learned advocates for the parties and have perused the papers.

4. Mr.M M Tirmizi learned advocate for the petitioner has argued at length that woods purchased by the petitioner was stated to be approximately 30 quintals and on seizure it was found to be 70 quintals. It is also his argument that the weights stated were approximate and therefore, there may be a mistake in stating the said weight approximately. Now, considering the margin of 40 quintals, it is not acceptable that there was a mistake on the part of the department in weighing the woods in question.

5. Even looking to the order of the Forest Officer, it is found that the woods purchased by the petitioner in auction are different from the woods seized by the Forest Officer at the relevant point of time. Therefore also, it is not possible to agree with the argument of the learned advocate for the petitioner that there was some mistake on the part of the Forest Department. After all, this would be a question of fact and it would not be possible for this Court, exercising extraordinary constitutional writ jurisdiction, to enter into the said area of disputed question of fact. Therefore, this argument has to be disallowed.

6. It is, further contended by Mr.Tirmizi that the petitioner was not afforded an opportunity of being heard. On this aspect of the case, the Forest Officer as well as the learned Sessions Judge both have recorded concurrent finding of fact that the petitioner was allowed an opportunity to appear on 22/02/2000 and since he could not appear on that date, he was required to attend on 01/03/2000. But, none appeared and therefore, the order was passed. It seems that it was not a grievance made by the petitioner that 01/03/2000 was not a date convenient to him. Again, this would be a question of fact and therefore, it cannot be said that reasonable opportunity was not given to the petitioner and therefore, there is a consequential violation of principle of natural justice.

7. It has also been argued by Mr.Tirmizi that looking to the passage of time, it would not be possible for the petitioner to unload the old woods and to load fresh woods in a very short time. This would be a matter

of fact depending upon so many factors, including the fact about the number of persons engaged for loading and unloading purpose and the weight of each particular peace of wood loaded and unloaded. If the woods are light, then it would be easy to load and unload them in short time also. On the other hand, if the woods are heavy, then it may take more time. Moreover, the Forest Officer has clearly recorded a finding that the woods found at the time of seizure, were fresh and therefore, he came to a conclusion that this was not the material the petitioner had purchased from a public auction. This finding of fact has been accepted by the Sessions Court also and therefore, it would not be open for this Court to deal with this factual aspect in this petition.

8. It is further contended by the learned advocate for the petitioner that it was not obligatory on the part of the Forest Officer as well as on the part of the learned Sessions Judge, to confiscate the woods as well as the vehicle. He has also argued that the said two authorities could have directed that fine be imposed in place of confiscation of the property. That, therefore, there is non-application of mind on their part, in respect of the woods and the vehicle and therefore, to that extent the petition is required to be allowed.

9. Now, it is required to be considered that on this aspect of the case the Hon'ble the High Court of Kerala had an occasion to deal with a case of K.R.Pushpan V/s. State of Kerala reported in AIR 1985 Kerala 184. There it was observed that when the value of the contraband article carried in the vehicle was negligible compared to the value of vehicle then confiscation of vehicle is not legal. This observation was made in accordance with the provisions made in Section 61(A) of the Kerala Forest Act, 1961.

10. In Dinesh Kumar Kartike V/s. State of M.P. reported in (2000) 1 SCC 323, the Hon'ble the Supreme Court was required to deal with the provisions made in Section 19(1)(b) of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (9 of 1969) which has been referred at page 324 in the said judgment. It can be reproduced for ready reference as follows;

"19. Composition of offences. - (1) The State Government may, by notification, empower a Forest Officer -

(a) * * *

(b) when any property other than a specified forest produce has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer."

10.1 On the strength of the above provision, the Hon'ble the Supreme Court observed that the Forest Officer concerned had not focussed his attention on the enabling provision of Section 19(1)(b) of the said Act. Therefore, the Hon'ble the Supreme Court was pleased to direct the said Officer to consider the question of release of the truck already confiscated under Section 19(1)(b) of the said Act and to pass appropriate order in the facts and circumstances of the case.

11. Then we have a judgment of our own High Court in the case of State of Gujarat V/s. Shantilal Mansukhlal Mistry reported in 1995 (1) GLR 860. There this Court had an occasion to consider the provisions made in the Indian Forest (Gujarat Amendment) Act, 1983. The relevant provision can be gathered from Section 61(A) of the said amendment Act. This Court had referred the said provision in para 8 of the judgment which can be reproduced for ready reference as follows;

Para 8 : It appears that though the submissions of the learned APP is attractive, it cannot be said that the learned Sessions Judge or the Addl. Sessions Judge had committed an error of law in modifying the order passed by the Dy.Conservator of Forests. The relevant provisions of the Act as inserted by the Indian Forest (Gujarat Amendment) Act, 1983, read as under :

"61A. Confiscation by Forest Officers in certain cases :

(1) * * *

(2) Where the authorised officer seizes under sub-sec.(1) of Sec.52 any forest produce which is the property of the State Government or where any such property is produced before the authorised officer under sub-sec.(1) and he is satisfied that a forest offence is committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commissions of such forest offence, order confiscation of the property so seized together

with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

(3) * * *

(4) 61D. Appeal: - (1) Any person aggrieved by any order passed under Sec.61A or Sec.61C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity of being heard to the appellant and the authorised officer or the office specially empowered under Sec.61C, as the case may be, pass such order as he may thin fit confirming, modifying or annulling the order appealed against."

11.1 The above provision makes it clear that such an Officer has power to pass an order of confiscation of property. Then the learned Judge also dealt with the provisions made in Sec.61D of the said Act.

11.2 There the powers of the learned Sessions Judge have been enumerated and it has been provided that the Sessions Judge shall after giving an opportunity of being heard to the appellant and the authorised officer or the officer specifically empowered under Sec.61C, as the case may be, pass such order, as he may think fit confirming, modifying or annulling the order appealed against.

11.3 On interpretation of the said provision made in Section 61D of the said Act, the learned Single Judge of this Court has clearly observed that if the above two provisions are read together, then it is extremely clear that the Sessions Judge has power to confirm, modify or annul an order against which an appeal is filed. Again in para 8, the learned Judge has clearly laid down that the Sessions Judge is empowered under Section 61D to confirm, modify or annul the order of the authorised officer, meaning thereby that confiscation would not be compulsory. The order of the Sessions Judge was therefore, upheld by the learned Single Judge of this Court in the said matter.

12. Considering the aforesaid decisions, it is clear that the learned Sessions Judge had power to decide the aforesaid issues. However, it seems that he has not clearly focussed his attention to the provision made in Sec.61D of the said Act, with respect to the vehicle in question. In that view of the matter, in my opinion, this would be a proper case, wherein the petition may be partly allowed, the order of the learned Judge impugned in this petition may be partly set aside and the learned Sessions Judge may be directed to consider the aforesaid provision and to decide the matter in accordance with law as regards the motor vehicle, since it may not be practicable for this Court to consider this aspect of the matter, when the Sessions Court has not properly considered the same and when the value of the vehicle involved is not apparent on the face of the record.

13. As regards the woods, there are concurrent findings of fact that the woods received are different from the woods purchased in auction, by the petitioner and they are fresh. Therefore, there being a finding of fact that it was a forest product carried illegally in the vehicle of the petitioner, the confiscation thereof, can not be challenged or set aside.

14. For the foregoing reasons, this petition is partly allowed and the judgment and order of the learned Sessions Judge dismissing Forest Appeal of the petitioner and confirming the confiscation of motor vehicle are set aside. The learned Sessions Judge shall consider the provision made in Section 61D of the Forest Act, 1963 with respect to the motor vehicle and shall decide the issue, after giving a reasonable opportunity to the parties of being heard.

14.1 The judgment and order of the learned Sessions Judge dismissing the Forest Appeal of the petitioner and confirming the confiscation of woods are confirmed and that part of the petition is dismissed.

14.2 No order as to cost. Rule is partly made absolute to the extent indicated above. Direct service permitted.

(D. P. Buch, J.)

pravin/